was on the basis of this understanding and appreciation that the offers were made and accepted. The situation reveals a complete abandonment by the parties concerned of the appellants' position in the establishment of the Administration and a clear intention and understanding that the appellants were to be the employees of the respondent. In our view acceptance of these offers under these circumstances clearly amounted to resignation taking immediate effect from the Administration's services.

During the course of his submission Mr. Rajan dealt with two other matters. The first is the comparison between the appellants' salaries and those of their former colleagues who remained in the services of the Administration. With respect, we are of the view that this submission is without any merit because the appellants ceased to be the Administration's employees and became no longer comparable to their former colleagues as a result of the acceptance of the offers. The second is the submission on the firmness of the respondent in refusing to apply *Suffian* to the appellants. As the absorption of the appellants into the employment of the respondent was a matter of discretion and policy decision of the respondent and the absorption governed by the contract of employment, the respondent's reason for refusing to apply *Suffian* is completely irrelevant. Moreover, there is nothing unreasonable or arbitrary on the part of the respondent in refusing to apply *Suffian* when such application would create discrimination against its other employees who had never been seconded from the Administration. The possibility of discrimination is implicit in the evidence of DW1, the respondent's Director of Staff, who said that "Some of the railway staff earned more than our regular Authority staff". The appellants well appreciated this problem as they made no comparison at all between themselves and those of their colleagues in the services of the respondent. We therefore hold that the refusal by the respondent to apply *Suffian* to the appellants per se, without any breach of contract, nor statute, cannot be the basis of their claim of right to *Suffian* conversion.

Finally, as the appellants' entry into the permanent establishment of the respondent was based on contracts of employment, and as there was nothing in the contract to show that the respondent must apply *Suffian* conversion before converting their salaries to *Harun*, it is too late for them to do anything, and we certainly have no power to rewrite their contracts to include this provision. The appellants should have made counter offers before accepting the respondent's offers on 31.3.1971. Probably they saw no advantage to be gained by insisting upon that condition as they well knew that the respondent was under no obligation to absorb them into its establishment, still less to agree to include *Suffian* in their offers which would only result in the respondent having difficulties as regards its other employees.

Thus for the reasons given above, the appeal is dismissed with costs and the deposit should be paid to the respondent on account of taxed costs.

Appeal dismissed.

Solicitors: *G.T. Rajan & Co., Tunku Zuhri, Manan & Abdullah*

HEN CHEAN SENG & ANOR. v. PUBLIC PROSECUTOR

[F.C. (Raja Azlan Shah L.P., George Seah F.J. & Abdoolcader J.) January 29, 1983]

[Kuala Lumpur — Federal Court Criminal Reference No. 1 of 1983]

Constitutional Law — Whether Federal Territory is integral part of Malaysia — Whether the High Court in Malaya sitting in the Federal Territory is lawfully constituted — Constitution (Amendment)(No. 2) Act, 1973 (Act A206), Part I and Schedule, ss. 3, 4 & 6(1) — Federal Constitution, arts. 2, 121 & 159(6).

This was a reference by the High Court under section 48(4) of the Courts of Judicature Act, 1964, on the following questions (1) whether the Federal Territory is an integral part of Malaysia; and (2) whether the High Court in Malaya sitting in the Federal Territory is lawfully constituted.

Held: (1) the Constitution (Amendment)(No. 2) Act, 1973 was for the purposes of Article 2(a) of the Federal Constitution a law admitting to the Federation the Federal Territory by section 4 thereof which vests the Federation with sovereignty and all power and jurisdiction over, in and in respect of the Federal Territory which was established by the Act as Article 1(4) of the Federal Constitution specifically states;

(2) the answer to the second question is clearly provided for in the provisions of section 6(1) of the Constitution (Amendment)(No. 2) Act, 1973 (as amended by the Constitution (Amendment)(No. 2) Act 1976) which prescribes that any written law existing and in force in the Federal Territory shall continue to be in force therein until repealed, amended or replaced by laws passed by Parliament;

(3) Article 2(a) of the Federal Constitution read in the light of the definition of State in Article 159(6), the

Constitution (Amendment)(No. 2) Act, 1973 and the provisions of Article 1 of the Constitution, considered together and in that order, clearly manifest the position that the High Court in Malaya has jurisdiction in the Federal Territory;

(4) the answer to the two questions presented for determination must be an emphatic "aye".

Case referred to:

(1) *Merdeka University Berhad* v. *Government of Malaysia* [1981] 2 M.L.J. 356.

FEDERAL COURT.

Karpal Singh (*Ngeow Yin Ngee* with him) for the appellant.

Shaikh Daud bin Haji Mohamed Ismail (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah L.P. (delivering the Judgment of the Court): The High Court has in this case made a reference to this court under section 48(4) of the Courts of Judicature Act, 1964 on two constitutional questions:

(1) Whether the Federal Territory is an integral part of Malaysia.

(2) Whether the High Court in Malaya sitting in the Federal Territory is lawfully constituted.

By Part I of and the Schedule to the Constitution (Amendment)(No. 2) Act, 1973 (Act A206) which came into force on February 1, 1974 the Federal Territory was constitutionally excised from the territory of the State of Selangor (section 3) and constituted as a territory *per se* with jurisdiction in respect thereof vested in the Federation by section 4 which specifically provides that the Federation shall exercise sovereignty over the Federal Territory and all power and jurisdiction in or in respect of the Federal Territory shall be vested in the Federation. Article 1(2) of the Federal Constitution enumerates the States of the Federation and the exclusion of the Federal Territory from the State of Selangor is provided for in Article 1(4) of the Constitution which was added by Act A206. Article 2(a) of the Constitution provides that Parliament may by law admit other States to the Federation, and 'State' in Article 2(a) is defined in Article 159(6) of the Constitution to include any territory. Act A206 is indeed for the purposes of Article 2(a) of the Constitution such a law admitting to the Federation the Federal Territory by section 4 thereof which vests the Federation with sovereignty and all power and jurisdiction over, in and in respect of the Federal Territory which was established by Act A206 as Article 1(4) of the Constitution specifically states.

Mr. Karpal Singh for the applicants at whose behest this reference was made says at the outset that if the answer to the first question posed is in the affirmative it will not be necessary to deal with the second question. We should however add that in respect of the second question the answer is clearly provided for in the provisions of section 6(1) of Act A206 [as amended by the Constitution (Amendment)(No. 2) Act, 1976-Act A335] which prescribes that any written law existing and in force in the Federal Territory shall continue to be in force therein until repealed, amended or replaced by laws passed by Parliament. The Courts of Judicature Act is such a written law existing and in force in the Federal Territory prior to February 1, 1974 and the local jurisdiction of the High Court in Malaya as defined in section 3 of that Act clearly applied to the Federal Territory when it was still within the State of Selangor previous to the operation of Act A206 and continues to so apply by virtue of the provisions of section 6(1) of Act A206. On the point taken in respect of Article 121(1)(a) of the Constitution as to the vesting of judicial power in the High Court in Malaya for the States of Malaya, Article 2(a) of the Constitution read in the light of the definition of 'State' in Article 159(6), Act A206 and the provisions of Article 1 of the Constitution, considered together and in that order, clearly manifest the position that the High Court in Malaya has jurisdiction in the Federal Territory, and in any event any contention to the contrary would seemingly divest the High Court in Malaya of any judicial power or jurisdiction throughout the States of Malaya as Article 121(1)(a) of the Constitution specifically prescribes that the High Court in Malaya shall have its principal registry in Kuala Lumpur, the status of which is in issue in the questions referred to us.

We accordingly declare an emphatic 'aye' in answer to the two questions presented for determination by us and would only in conclusion express our concern that it has been thought at all necessary to raise the first question which would *ex facie* purport to posit the preposterous proposition that the Federal Territory is *res nullius* or no man's land, in which event we would be sitting, in the words of Abdoolcader J., in *Merdeka University Berhad* v. *Government of Malaysia*(1), in the middle of nowhere!

Order accordingly.

Solicitors: *Ngeow & Co.*